

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TERRY ALLEN MILES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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1:22-CV-281-RP
[1:18-CR-39-RP-1]

ORDER

Before the Court is Petitioner Terry Allen Miles’ (“Miles”) Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255. (Dkt. 299). Miles filed it on April 7, 2022. (*Id.*). The case was referred to United States Magistrate Judge Mark Lane for findings and recommendations, pursuant to 28 U.S.C. § 636(b). Judge Lane filed his report and recommendation on August 2, 2023. (R&R, Dkt. 310). In his report and recommendation, Judge Lane recommends that the Court dismiss Miles’ Motion to Vacate, Set Aside or Correct Sentence for failing to show his counsel was ineffective. (*Id.*). Judge Lane also denied Miles’ request for an evidentiary hearing on the motion. (*Id.* at 13). Miles timely filed objections to the report and recommendation. (Obj., Dkt. 311). In the same filing as his objections, Miles appealed Judge Lane’s order denying Miles’ request for an evidentiary hearing on his Section 2255 motion. (*Id.*).

Objections to the Report and Recommendation

A party may serve and file specific, written objections to a magistrate judge’s findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Miles timely objected to “Ground 1” and “Ground 2” of the report and recommendation as well as Judge Lane’s recommendation that a certificate of appealability be

denied, (Obj., Dkt. 311), the Court reviews those portions of the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules Miles' objections and adopts the report and recommendation as its own order.

Appeal of Hearing Denial

In his report and recommendation, Judge Lane denied Miles' request for an evidentiary hearing on his Section 2255 motion. (R&R, Dkt. 310, at 12–13). Miles' objection to Judge Lane's order denying the evidentiary hearing is considered an appeal of a magistrate judge's order. A district court judge may reconsider any pretrial matter determined by a magistrate judge where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A). District courts apply a "clearly erroneous" standard when reviewing a magistrate judge's ruling under the referral authority of that statute. *Castillo v. Frank*, 70 F.3d 382, 385 (5th Cir. 1995). The clearly erroneous or contrary to law standard of review is "highly deferential" and requires the court to affirm the decision of the magistrate judge unless, based on the entire evidence, the court reaches "a definite and firm conviction that a mistake has been committed." *Gomez v. Ford Motor Co.*, No. 5:15-CV-866-DAE, 2017 WL 5201797, at *2 (W.D. Tex. Apr. 27, 2017) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). The clearly erroneous standard "does not entitle the court to reverse or reconsider the order simply because it would or could decide the matter differently." *Id.* (citing *Guzman v. Hacienda Records & Recording Studio, Inc.*, 808 F.3d 1031, 1036 (5th Cir. 2015)).

Judge Lane states that "Miles has not shown that an evidentiary hearing is warranted" and that "Miles' claims that his counsel was ineffective are entirely without merit." (R&R, Dkt. 310, at 13). "When the district court has sufficient facts before it to make an informed decision on the merits of the habeas petitioner's claim, it does not abuse its discretion in failing to conduct an evidentiary hearing." *Gallegos v. Quartermann*, 265 F. App'x 300, 303 (5th Cir. 2008) (cleaned up). Given

that Judge Lane did not find Miles' claims to be meritorious, the Court finds that the denial of an evidentiary hearing was not clearly erroneous or contrary to law.

Accordingly, **IT IS ORDERED** that the report and recommendation of United States Magistrate Judge Mark Lane, (Dkt. 310), is **ADOPTED**. Miles' Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255, (Dkt. 299), is **DISMISSED**.

IT IS FURTHER ORDERED that Judge Lane's denial of an evidentiary hearing on Petitioner's Section 2255 Motion is **AFFIRMED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

SIGNED on November 21, 2023.

A handwritten signature in blue ink, appearing to read 'R. Pitman', is written above a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE